

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

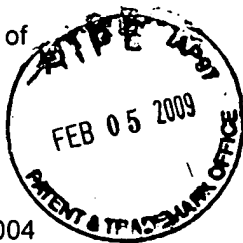
In re Patent Application of

Atty CC-839-1383

Dkt.

C# M#

LAGRANGE et al.



TC/A.U.

3745

Serial No. 10/774,400

Examiner: C. Verdier

Filed: February 10, 2004

Date: February 5, 2009

Title: ADVANCED FIRTREE AND BROACH SLOT FORMS FOR TURBINE STAGE 1
AND 2 BUCKETS AND ROTOR WHEELSMail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION REQUESTING WITHDRAWAL OF ERRONEOUS ABANDONMENT
OR IN THE ALTERNATIVE TO REVIVE AN UNINTENTIONALLY ABANDONED APPLICATION**

This is a response/amendment/letter in the above-identified application and includes an attachment which is hereby incorporated by reference and the signature below serves as the signature to the attachment in the absence of any other signature thereon.

☐ **Correspondence Address Indication Form Attached.****Fees are attached as calculated below:**

Total effective claims after amendment	0	minus highest number	
previously paid for	20 (at least 20) =	0 x \$52.00	\$0.00 (1202)/\$0.00 (2202) \$

Independent claims after amendment	0	minus highest number	
previously paid for	3 (at least 3) =	0 x \$220.00	\$0.00 (1201)/\$0.00 (2201) \$

If proper multiple dependent claims now added for first time, (ignore improper); add
\$390.00 (1203)/\$195.00 (2203) \$

Petition is hereby made to extend the current due date so as to cover the filing date of this
paper and attachment(s)

One Month Extension	\$130.00 (1251)/\$65.00 (2251)
Two Month Extensions	\$490.00 (1252)/\$245.00 (2252)
Three Month Extensions	\$1110.00 (1253)/\$555.00 (2253)
Four Month Extensions	\$1730.00 (1254)/\$865.00 (2254)
Five Month Extensions	\$2350.00 (1255)/\$1175.00 (2255) \$

Terminal disclaimer enclosed, add
\$140.00 (1814)/\$70.00 (2814) \$

☐ Applicant claims "small entity" status. ☐ Statement filed herewith

Rule 56 Information Disclosure Statement Filing Fee	\$180.00 (1806)	\$	0.00
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Assignment Recording Fee	\$40.00 (8021)	\$	0.00
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Other:		\$	
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TOTAL FEE	\$	0.00
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☐ **CREDIT CARD PAYMENT FORM ATTACHED.**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

901 North Glebe Road, 11th Floor
Arlington, Virginia 22203-1808
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NIXON & VANDERHYE P.C.
By Atty: Chris Comuntzis, Reg. No. 31,097

Signature: 

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of
LAGRANGE et al.

Serial No. 10/774,400

Filed: February 10, 2004

For: ADVANCED FIRTREE AND BROACH SLOT FORMS FOR TURBINE
STAGE 1 AND 2 BUCKETS AND ROTOR WHEELS



Atty. Ref.: 839-1383

TC/A.U.: 3745

Examiner: C. Verdier

February 5, 2009

Mail Stop Petitions
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION REQUESTING WITHDRAWAL OF ERRONEOUS
ABANDONMENT OR IN THE ALTERNATIVE TO REVIVE AN
UNINTENTIONALLY ABANDONED APPLICATION**

Sir:

Applicants respectfully petition for withdrawal of what is believed to be an erroneous abandonment (Communication Re: Appeal including Notice of Abandonment dated December 5, 2009) of the subject application for an alleged failure to completely respond to a Notice of Non-Compliant Appeal Brief issued on August 13, 2009.

Applicants submit that they fully complied with 37 CFR 41.37(c) and with the Examiner's requirement for more details in the *Summary of Claimed Subject Matter* of the Appeal Brief on September 12, 2008 and, therefore, that the abandonment was improper.

Applicants further submit that in any event it was premature to dismiss the appeal and abandon this case since Applicants still had extensions of time up to and including February 13, 2009 to remedy any perceived deficiency by the Examiner in the *Summary of Claimed Subject Matter* of the Appeal Brief. Since the Examiner's Notice of Non-Compliant Appeal Brief was ambiguous as to the level of detail required and, in any

event, did not comport with Patent Office Rules, Applicants should have been provided additional time with payment of extension fees to correct what the Examiner believed to be error in the Appeal Brief rather than be subjected to the harsh penalty of abandonment.

Alternatively, if it is determined that the Examiner's dismissal of the appeal and abandonment of this case was proper then Applicants respectfully petition for the revival of this unintentionally abandoned application. That this case was unintentionally abandoned is clear from the fact that Applicants filed a bona fide attempt to comply with the Examiner's Notice requirement.

A. Applicants Fully Complied with 37 CFR 41.37(c) and
with the Notice of Non-Compliant Appeal Brief

Applicants' invention involves turbine buckets and wheelposts which have intricately curved surfaces, i.e., filets and tangs on the buckets and wheelposts so that they can be fitted together and reduce the stresses acting on the buckets and wheelposts at the point of their attachment. See present specification at, *inter alia*, Abstract.

On August 13, 2008, the Examiner issued a second Notification of Non-Compliant Appeal Brief (Notice Requirement) stating "while Applicant's Replacement Brief is appreciated the reference numerals provided in parenthesis need to appear immediately adjacent to the claim limitations that they refer to, in order to avoid a remand from the Board of Patent Appeals and Interferences."¹ See Notification

¹ The Examiner issued a first Notification of Non-Compliant Appeal Brief of May 5, 2008 stating that "the brief does not contain a concise statement of the subject matter defined in each of the independent claims referring to the drawings by reference characters." Applicants filed a Replacement Appeal Brief on June 5, 2008 adding the requested reference numbers for each independent claim and dependent claim argued separately on appeal.

Requirement dated August 13, 2008 at page 2, box 10 (emphasis supplied). Applicants filed a second Replacement Appeal Brief on September 12, 2008 adding the requested reference numbers for each independent claim and dependent claim argued separately on appeal adjacent to be immediately adjacent to the claim limitations.

The first limitation of independent claim 10, in the Appeal Brief filed on June 6, 2008, had reference numerals positioned at the end of the limitation after "filets and tangs." In accordance with the Examiner's Notice Requirement, Applicant corrected this limitation to place reference numerals immediately adjacent to the filets and tangs of the first limitation as shown below:

a wheel having sixty broach slots, each one of said broach slots having an interleaved system of fillets [Fig. 1, ref. 10, 12, Fig. 2B, ref. 12, 31-33; Paragraphs 27-29 and 33] and tangs [Fig. 1, ref. 10, 12, Fig. 2B, ref. 12, 28-30; Paragraphs 27-29 and 33].

See Replacement Appeal Brief filed on September 12, 2008 at page 7. Applicants understood the Examiner's Notice Requirement to be that reference numerals had to be placed adjacent the two distinguishing features of the claim limitation, namely the filets and tangs. Thus Applicants submitted the Replacement Appeal Brief on September 12, 2008 with reference numerals, as well as page and line numbers, immediately adjacent the filets and tangs.

On December 5, 2008, the Examiner issued a communication dismissing the appeal and abandoning the application because "[t]he corrected Appeal Brief filed September 12, 2008 did not overcome all of the reasons . . . for non-compliance of which the Appellant was notified." In separate telephone conferences with the Examiner and his Supervisor it was learned that Applicant was required to provide reference characters adjacent to each and every element of a claim even when multiple

interrelated elements were within a single limitation of the claim. Because such a requirement is not anywhere within 37 CFR 41.37 *Appeal Brief* it is submitted that it is error to dismiss the appeal and abandon the present case on this basis.

The relevant portion of 37 CFR 41.37 states:

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. . .

See 37 CFR 41.37 (c)(v). Nowhere is there a requirement that the reference characters must be repeated throughout a claim limitation so as to be adjacent to every conceivably possible claim element, as is now required by the Examiner. Indeed, the Examiner's own Notice Requirement was at best ambiguous as to what was being required and, in any event, did not comport with the rule stated above.

In the telephonic interviews with the Examiner and his Supervisor it was learned that Applicants were expected to provide reference numerals adjacent to each and every possible claim term in the above described first limitation including "buckets" "broach slots" and "wheel" even though these terms are subsumed into or are part of the same limitation that has been identified by reference numerals as well as page and line numbers.

Under the circumstances, it is respectfully submitted that Applicants filed a fully responsive Appeal Brief on September 12, 2008, and that the Examiner's communication to the contrary and abandonment of the Application is improper and should be withdrawn. No petition fee is believed to be owed since this petition is made to correct Examiner error, however, the Commissioner is hereby authorized to charge

any deficiency in the fee(s) filed, or asserted to be filed, or which should have been filed herewith to our **Account No. 14-1140**.

B. Applicants Should be allowed to File an Additional Amended Brief
with an Extension of Time Pursuant to 37 CFR 1.136(a)

Applicants respectfully submit, in the alternative, that should the Commissioner disagree with Applicants and deem the Appeal Brief filed on September 12, 2008 to be defective that Applicants should have been given an additional opportunity to correct the defective Appeal Brief, especially since extension of time fees were still available to Applicants up to and including February 13, 2009. Accordingly, Applicants have attached hereto a Third Replacement Appeal Brief correcting all of the deficiencies identified by the Examiner. This submission requiring an extension of time fee is hereby stated to include a petition for such time extension, and the Commissioner is hereby authorized to charge any deficiency in the fee(s) filed, or asserted to be filed, or which should have been filed herewith to our **Account No. 14-1140**.

C. Alternatively, Applicants Petition for Revival of this
Unintentionally Abandoned Application

In the alternative, if it is deemed that Applicants are not entitled to any relief under sections A and B above, then Applicants conditionally request that this petition be considered a petition for revival of an unintentionally abandoned application. It is respectfully submitted that the abandonment of this Application was unintentional as Applicants had filed what was believed to be a timely Replacement Appeal Brief on September 12, 2008 within the initial one month period for responding to the Examiner's Notification on Non-Compliant Appeal Brief issued on August 13, 2008. The Third Replacement Appeal Brief attached hereto corrects all of the deficiencies identified by


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Serial No. 10/774,400

the Examiner. The Commissioner is hereby authorized to charge any deficiency in the fee(s) filed, or asserted to be filed, or which should have been filed herewith to our **Account No. 14-1140.**

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:


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